

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-138V
UNPUBLISHED

KATHERINE MENSINGER
as Administrator of the
ESTATE OF THOMAS MENSINGER

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: April 25, 2022

Special Processing Unit (SPU); Joint
Stipulation on Damages; Influenza
(Flu) Vaccine; Guillain-Barre
Syndrome (GBS)

Steven K Jambois, Maglio, Kralovec, Jambois and Schwartz, Chicago, IL, for Petitioner.

Katherine Carr Esposito, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON JOINT STIPULATION¹

On February 10, 2022, Katherine Mensinger, as the Administrator of the Estate of Thomas Mensinger, deceased, filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that the decedent suffered Guillain-Barre Syndrome (GBS), and subsequent death on February 9, 2018, resulting from adverse effects of an influenza (flu) vaccination received on November 11, 2017. Petition at 1; Stipulation, filed at April 22, 2022, ¶¶ 1-2. Petitioner further alleges that the vaccination was received within the United States, the decedent’s GBS persisted up until the date of his death, and neither Petitioner, nor any other party has ever filed any action for the decedent’s vaccine-related injury. Petition at 1, 3; Stipulation at ¶¶ 3-5. “Respondent denies that the decedent sustained a GBS Table injury; denies that the flu vaccine caused the decedent’s GBS, or any other

¹ Because this unpublished Decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims’ website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

injury; and denies that the decedent's death is a sequelae of a vaccine-related injury." Stipulation at ¶ 6.

Nevertheless, on April 22, 2022, the parties filed the attached joint stipulation, stating that a decision should be entered awarding compensation. I find the stipulation reasonable and adopt it as my decision awarding damages, on the terms set forth therein.

Pursuant to the terms stated in the attached Stipulation, **I award** the following compensation:

A lump sum of \$175,000.00 in the form of a check payable to Petitioner. Stipulation at ¶ 8. This amount represents compensation for all items of damages that would be available under Section 15(a). *Id.*

I approve the requested amount for Petitioner's compensation. In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

KATHERINE MENSINGER, as
Administrator of the Estate of
THOMAS MENSINGER, deceased,

Petitioner,

V.

SECRETARY OF HEALTH AND HUMAN
SERVICES,

Respondent.

No. 20-138V (ECF)
Chief Special Master Corcoran

STIPULATION

The parties hereby stipulate to the following matters:

1. Petitioner, Katherine Mensinger, as Administrator of the Estate of Thomas
Mensinger (“decedent”), deceased, filed a petition for vaccine compensation under the National
Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 to 34 (the “Vaccine Program”).
The petition seeks compensation for injuries allegedly related to the decedent’s receipt of an
influenza (“flu”) vaccine, which is contained in the Vaccine Injury Table (the “Table”), 42
C.F.R. § 100.3 (a).

2. The decedent received a flu vaccine on November 11, 2017.

3. The vaccine was administered within the United States.

4. Petitioner alleges that the decedent suffered Guillain Barré syndrome (“GBS”) within the time period set forth in the Table, or in the alternative, that his alleged injury was caused-in-fact by the flu vaccine. Petitioner further alleges that the decedent died on February 9, 2018, as a result of his alleged injury.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages on the decedent's behalf as a result of the decedent's condition or his death.

6. Respondent denies that the decedent sustained a GBS Table injury; denies that the flu vaccine caused the decedent's GBS, or any other injury; and denies that the decedent's death is a sequelae of a vaccine-related injury.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payment:

A lump sum of \$175,000.00 in the form of a check payable to petitioner as legal representative of the estate of Thomas Mensinger. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or

State health benefits programs (other than Title XIX of the Social Security Act (42 U.S.C. § 1396 et seq.)), or by entities that provide health services on a pre-paid basis.

11. Payment made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as the legal representative of the decedent's estate under the laws of the State of Michigan. No payments pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing petitioner's appointment as legal representative of the decedent's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as legal representative of the estate of the decedent at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as legal representative of the estate of the decedent upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as administrator of decedent's estate, on her own behalf, and on behalf of [REDACTED] decedent's estate, and his heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the United States and the Secretary of Health and Human Services [REDACTED] from any and all actions or causes of action (including agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42

U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to or death of decedent resulting from, or alleged to have resulted from the flu vaccination administered on November 11, 2017, as alleged by petitioner in a petition for vaccine compensation filed on or about February 10, 2020, in the United States Court of Federal Claims as petition No. 20-138V.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

15. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Childhood Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

16. This Stipulation shall not be construed as an admission by the United States or the Secretary of Health and Human Services that the decedent sustained a GBS Table injury; that the flu vaccine caused the decedent's alleged injuries, or any other injury; or that the decedent's death was a sequelae of a vaccine-related injury.

[illegible]

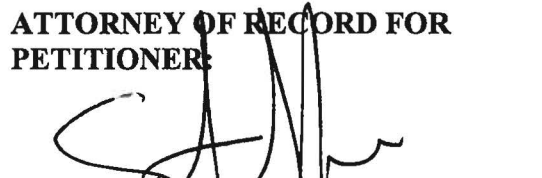
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Respectfully submitted,


PETITIONER:


KATHERINE MENSINGER

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George R. Grimes Digitally signed by George R.
Grimes -S14
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Dated: 04/19/2022